

the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class;

(f)(1) Specify the goods or services for which the mark is in use in commerce, and/or the goods or services for which excusable nonuse is claimed under paragraph (g)(2) of this section;

(2) If the affidavit or declaration covers less than all the goods or services, or less than all the classes in the registration, specify the goods or services being deleted from the registration;

(g)(1) State that the registered mark is in use in commerce on or in connection with the goods or services in the registration; or

(2) If the registered mark is not in use in commerce on or in connection with all the goods or services in the registration, set forth the date when use of the mark in commerce stopped and the approximate date when use is expected to resume; and recite facts to show that nonuse as to those goods or services is due to special circumstances that excuse the nonuse and is not due to an intention to abandon the mark;

(h) Include a specimen showing current use of the mark for each class of goods or services, unless excusable nonuse is claimed under paragraph (g)(2) of this section. The specimen must:

(1) Show the mark as actually used on or in connection with the goods or in the sale or advertising of these services. A photocopy or other reproduction of the specimen showing the mark as actually used is acceptable. However, a photocopy that merely reproduces the registration certificate is not a proper specimen.

(2) Be flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long, if not submitted electronically. If a specimen exceeds these size requirements (a "bulky specimen"), the Office will create a facsimile of the specimen that meets the requirements of the rule (i.e., is flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long) and put it in the file wrapper;

(i) If the registrant is not domiciled in the United States, the registrant must list the name and address of a United States resident upon whom notices or process in proceedings affecting the registration may be served.

11. Revise § 2.166 to read as follows:

§ 2.166 Affidavit of continued use or excusable nonuse combined with renewal application.

An affidavit of declaration under section 8 of the Act and a renewal application under section 9 of the Act may be combined into a single document, provided that the document meets the requirements of both sections 8 and 9 of the Act. The combined document must be filed using the Trademark Electronic Application System (TEAS, available at <http://www.uspto.gov>), unless § 2.22 applies.

12. Revise § 2.167 to read as follows:

§ 2.167 Affidavit or declaration under section 15.

The affidavit or declaration in accordance with § 2.20 provided by section 15 of the Act for acquiring incontestability for a mark registered on the Principal Register or a mark registered under the Act of 1881 or 1905 and published under section 12(c) of the Act (§ 2.153) must:

(a) Be filed using the Trademark Electronic Application System (TEAS, available at <http://www.uspto.gov>), unless § 2.22 applies;

(b) Be signed by the registrant;

(c) Identify the certificate of registration by the certificate number and date of registration;

(d) Recite the goods or services stated in the registration on or in connection with which the mark has been in continuous use in commerce for a period of five years after the date of registration or date of publication under section 12(c) of the Act, and is still in use in commerce;

(e) Specify that there has been no final decision adverse to registrant's claim of ownership of such mark for such goods or services, or to registrant's right to register the same or to keep the same on the register;

(f) Specify that there is no proceeding involving said rights pending in the Patent and Trademark Office or in a court and not finally disposed of;

(g) Be filed within one year after the expiration of any five-year period of continuous use following registration or publication under section 12(c). The registrant will be notified of the receipt of the affidavit or declaration.

(h) Include the required fee for each class to which the affidavit or declaration pertains in the registration. If no fee, or a fee insufficient to cover at least one class, is filed at an appropriate time, the affidavit or declaration will not be refused if the required fee(s) (See § 2.6) are filed in the Patent and Trademark Office within the time limit set forth in the notification of this defect by the Office. If insufficient

fees are included to cover all classes in the registration, the particular class or classes to which the affidavit or declaration pertains should be specified.

13. Amend § 2.168 by revising paragraph (a) to read as follows:

§ 2.168 Affidavit or declaration under section 15 combined with affidavit or declaration under section 8, or with renewal application.

(a) The affidavit or declaration filed under section 15 of the Act may also be used as the affidavit or declaration required by section 8, if the affidavit or declaration meets the requirements of both sections 8 and 15. The document must be filed using the Trademark Electronic Application System (TEAS, available at <http://www.uspto.gov>), unless § 2.22 applies.

* * * * *

Dated: August 24, 2001.

Nicholas P. Godici,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 01-21878 Filed 8-29-01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA117-4132; FRL-7047-5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; One-Hour Ozone Attainment Demonstration Plan for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision submits an analysis and determination that there are no additional reasonably available control measures (RACM) available to advance the area's attainment date after adoption of all Clean Air Act (Act) required measures. On December 16, 1999, EPA proposed to approve, and to disapprove in the alternative, the attainment demonstration State implementation plan (SIP) for the Philadelphia-Wilmington-Trenton severe ozone nonattainment area (the Philadelphia area). The intended effect of this action is to propose approval of a reasonably

available control measure (RACM) analysis submitted by the Commonwealth of Pennsylvania. This action is being taken in accordance with the Clean Air Act.

DATES: Written comments must be received on or before October 1, 2001.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814-2179. Or by e-mail at cripps.christopher@epa.gov. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

A. When did Pennsylvania submit the RACM analysis? On July 19, 2001, the Commonwealth of Pennsylvania (Pennsylvania) submitted the RACM analysis for the Philadelphia area as a SIP revision.

B. Did Pennsylvania submit any other revisions to or other material relevant to the attainment demonstration on July 19, 2001? On July 19, 2001, Pennsylvania also submitted revised motor vehicle emissions budgets for the Pennsylvania portion of the Philadelphia area that include the benefits of the Federal Tier 2/Sulfur rule, and a revised enforceable commitment to conduct a mid-course review. The revised budgets and revised enforceable commitment submitted on July 19, 2001 are the subject of a separate supplemental notice of proposed rulemaking published recently in the **Federal Register**.

II. Analysis of the Pennsylvania Submittal

A. What are the requirements for reasonably available control measures (RACM)? Section 172(c)(1) of the Act requires SIPs to contain reasonably available control measures (RACM) as

necessary to provide for attainment. EPA has previously provided guidance interpreting the RACM requirements of section 172(c)(1). (See 57 FR 13498, 13560, April 16, 1992.) In that guidance, EPA indicates that potentially available control measures, which would not advance the attainment date for an area, would not be considered RACM under the Act. EPA concludes that a measure would not be reasonably available if it would not advance attainment. EPA's guidance also indicates that states should consider all potentially available measures to determine whether they are reasonably available for implementation in the area, including whether or not they would advance the attainment date. Further, the guidance calls for states to indicate in their SIP submittals whether measures considered are reasonably available or not, and if so the measures must be adopted as RACM. Finally, EPA indicated that states could reject potential RACM measures either because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, or for various reasons related to local conditions, such as economics or implementation concerns. The EPA also issued a recent memorandum on this topic, "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas." John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site: <http://www.epa.gov/ttn/oarpg/t1pgm.html>.

B. How does this submission address the RACM requirement? The analysis submitted by the Commonwealth on July 19, 2001, as a supplement to its attainment demonstration SIP for the Philadelphia area, addresses the RACM requirement. The Commonwealth convened a stakeholders group (the Southeastern Pennsylvania Ozone Stakeholders Group) to examine a wide variety of potential stationary source and mobile source controls. The stationary/area source controls that were considered included the adoption of South Coast Air Quality Management District/California Air Resources Board's (SCAQMD/CARB) limits for certain volatile organic compound (VOC) source categories that are more stringent than the already adopted control technique guideline (CTG) limits (e.g., fabric/paper, magnet wire, vinyl, miscellaneous metal parts, coil and metal furniture coating); limits on area source categories not covered by a CTG (e.g., adhesives, motor vehicle refinishing, surface/cleaning degreasing,

underground storage tank vents); rule effectiveness improvements; wood furniture coating (Pennsylvania has a SIP-approved rule encompassing the reasonably available control technology limits recommended under the CTG; under consideration for the RACM analysis was expanding the applicability of those limits to sources smaller than those covered by the CTG); "beyond RACT" controls on major stationary sources of nitrogen oxides (NO_x); and other potential measures. The mobile source control measures considered included the national low emission vehicle program, accelerated replacement of older buses with cleaner buses, compressed natural gas (CNG) fueled buses, and emissions-based vehicle registration fees. Mobile source controls also included control measures aimed at reducing vehicle trips, travel or congestion via land use planning, traffic flow improvements (signalization, ramp metering, speed limit restriction enforcement), improved mass transit, expanded parking at rail stations, telecommuting, bicycle lanes or access improvements at rail stations, parking taxes/surcharge, and increased gasoline taxes or miles travel based fees. The Commonwealth considered an extensive list of potential control measures and chose measures for implementation which went beyond the Federally mandated controls, which were found to be cost effective and technologically feasible. From the list of measures considered, the rules and measures adopted and submitted by Pennsylvania, as analyzed and examined by the stakeholders group, are as follows:

(1) Pennsylvania has adopted, and EPA has SIP-approved, the Commonwealth's rule for vehicle refinishing. The rule includes VOC content limits for motor vehicle refinishing coatings, application standards and storage and housekeeping work practices. This rule goes beyond the Federal rule in content limits and application and work practices standards. Compliance with this rule was required in 2000.

(2) Pennsylvania has adopted, and EPA has SIP-approved, the Commonwealth's rule requiring the sale of vehicles under the national low-emission vehicle program.

(3) Pennsylvania has adopted, and EPA has SIP-approved, the Commonwealth's rule to implement Phase II NO_x controls under the Ozone Transport Commission's (OTC) Memorandum of Understanding (MOU). This rule established a fixed cap on ozone-season NO_x emissions from major point sources of NO_x. The rule grants

each source a fixed number of NO_x allowances, applies state-wide, and requires compliance during the ozone season. The implementation of this rule commenced May 1, 1999 in the Commonwealth and reduces NO_x emissions both inside and outside the Philadelphia area.

(4) Pennsylvania has adopted and EPA has proposed approval of the Commonwealth's rule to implement the NO_x SIP call. We received no adverse comments on our proposed approval and expect to publish our final approval in the near future. The Pennsylvania rule requires compliance commencing with the start of the 2003 ozone season. (This measure was identified as Phase III control under the OTC MOU on NO_x control in the submittal because the evaluation occurred in 1996 well before the SIP call proposal.)

(5) Pennsylvania has also adopted rule effectiveness improvements for the implementation of regulations through the attainment year of 2005 for its portion of the Philadelphia area as part of its post 1996 Rate of Progress Plan which EPA has proposed or will shortly propose to approve in a separate rulemaking action in the **Federal Register**.

A large number of the considered measures have the potential to achieve benefits but are not considered to be cost effective, others have the potential for substantial widespread and long-term adverse impacts and one measure, a mandatory ban on residential lawn care activities on high ozone days, was considered infeasible due to the impracticability of effective enforcement. These are explained in further detail in the docket for this rulemaking.

The attainment demonstration for the Philadelphia area contains modeling using the urban airshed model (UAM) which demonstrates that the Philadelphia area cannot attain solely through reductions in the Philadelphia nonattainment area. The Philadelphia area relies on background reductions of transported ozone to attain the 1-hour ozone standard. EPA established in the NO_x SIP Call, promulgated on October 27, 1998 (63 FR 57356), the appropriate division of control responsibilities between the upwind and downwind States under the Act. In *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000), the court upheld the NO_x SIP Call on most issues, although a subsequent order of the court delays the implementation date to no later than May 31, 2004. EPA is moving forward to implement those portions of the rule that have been upheld, ensuring that most—if not all—of the emission reductions from the

NO_x SIP Call assumed in the 1-hour ozone NAAQS attainment demonstration for the Philadelphia area will occur. EPA's modeling to determine the region-wide impacts of the NO_x SIP Call clearly shows that regional transport of ozone and its precursors is impacting nonattainment areas several states away, and this analysis was upheld by the court. Also, on January 18, 2000 (65 FR 2674), EPA promulgated a final rule on petitions filed pursuant to section 126 of the Act by eight Northeastern States including Pennsylvania, that sought to mitigate interstate transport of NO_x emissions from a number of large electric generating units (EGUs) and large industrial boilers and turbines. Because the allocation of responsibility for transport was not made until late 1998 and early 2000, the prohibitions on upwind contributions under section 110(a)(2)(D) and section 126 could not be enforced prior to 2003 or 2004. The implementation of the control measures in states upwind of the Philadelphia area that are needed to eliminate the significant contribution of sources in those states—will not ripen until 2003 under the section 126 petitions or 2004 under the NO_x SIP call.

To demonstrate attainment of the one hour ozone standard, the UAM modeling required the Pennsylvania portion of the Philadelphia area to achieve emissions levels on the order of 428 tons per day of VOC emissions and 317 tons per day of NO_x. The ROP plan for 2005 is projected to get emissions levels down to 428 tons per day of VOC emissions and 310 tons per day of NO_x. The ROP plan does not consider the effects of the Federal Tier 2/Sulfur rule nor Pennsylvania's NO_x SIP call rule. These two programs will further reduce emissions in the area starting with the 2004 model year vehicles in the case of the Tier 2/Sulfur program and May 2003 for Pennsylvania's SIP call rule. Any potential reductions from the remaining potential RACM measures in aggregate are relatively small as documented in the docket compared to the ROP reductions (plus the additional benefits of Pennsylvania's SIP call rule and the Tier 2/Sulfur benefits) that will be reached by the 2005 attainment date.

Thus, EPA concludes that no additional measures could advance the attainment date for the Philadelphia area prior to full implementation of all upwind and local controls scheduled for implementation by 2005.

III. Opening of the Public Comment Period

The EPA is opening a comment period for 30 days to take comment on

the Commonwealth's July 19, 2001 RACM submittal discussed above. EPA is proposing to approve Pennsylvania's SIP revision for RACM, which was submitted on July 19, 2001, as a supplement to its 1-hour attainment demonstration for the Philadelphia area. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

IV. Proposed Action

EPA is proposing to approve the RACM analysis submitted by the Commonwealth of Pennsylvania on July 19, 2001 as a supplement to its 1-hour attainment demonstration for the Philadelphia area.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule regarding Pennsylvania's RACM analysis for the Philadelphia area does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 24, 2001.

Judith M. Katz,

Acting Regional Administrator, Region III.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE034/045/055-1016; FRL-7047-4]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Post 1996 Rate-of-Progress Plan for the Delaware Portion of the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area and Revisions Related to the Area's Attainment Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Delaware. These revisions establish the three (3) percent per year emission reduction rate-of-progress (ROP) requirement for the period from 1996 through 2005 for the Delaware portion of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area (the Philadelphia area), namely Kent and New Castle Counties. In conjunction with the ROP plans, themselves, EPA is also proposing to approve Delaware's contingency measures for ROP. EPA is also proposing to approve two revised enforceable commitments submitted by Delaware in response to EPA's December 16, 1999 proposed rulemaking action to approve the Philadelphia area's attainment demonstration. This proposal serves to open a comment period on these proposed revisions to the attainment demonstration plan.

DATES: Written comments must be received on or before October 1, 2001.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814-2182 or by e-mail at quinto.rose@epa.gov. Please note that while questions may be posed via

telephone and e-mail, formal comments must be submitted, in writing, as indicated in the ADDRESSES section of this document.

SUPPLEMENTARY INFORMATION:

I. Clean Air Act Requirements

For severe ozone nonattainment areas, the Clean Air Act (the Act) requires states to submit a plan to the United States Environmental Protection Agency (EPA) to achieve a fifteen (15) percent net reduction by November 15, 1996 of actual anthropogenic (human-caused) volatile organic compound (VOC) emissions. In addition to the 15 percent reduction, the Act also requires states to submit SIP revisions that achieve actual VOC emission reductions of at least 3 percent per year averaged over each consecutive 3-year period beginning November 1996, until the severe area's applicable attainment date of 2005. These ROP emission reductions are based on the states' 1990 emission levels. The Act also provides for crediting of VOC emission reductions achieved in the 1990-1996 period to the Post-1996 ROP plan if they are in excess of 15 percent VOC reductions requirements, and substitution of any anthropogenic nitrogen oxides (NO_x) emission reductions, net of growth, occurring in the post-1990 period for the post-1996 VOC emission reduction requirements.

The SIP revision for the 1990-1996 reductions is termed the "15 Percent ROP plan," and the plans for an average 3 percent per year reduction over each 3-year period after 1996 are collectively termed the "Post-1996 ROP plan." The Post-1996 ROP plan for a severe area with an attainment date of 2005, has 3 milestone years, 1999, 2002 and 2005. To satisfy the Post-1996 Plan requirement, States generally developed separate plans for each 3 year period and refer to those plans as the 1999 ROP plan, the 2002 ROP plan and the 2005 ROP plan.

For states within the Ozone Transport Region (OTR) with serious and above ozone nonattainment areas, a memorandum dated March 2, 1995, from Mary D. Nichols, EPA's then Assistant Administrator for Air and Radiation, provides for a two-phased approach to the Post-1996 ROPs. Briefly, in Phase I, the states are required to develop a plan for the milestone year of 1999 which includes necessary control measures to achieve a 9 percent reduction of VOC and/or NO_x emissions between November 1996 and November 1999. In Phase II, the states are required to assess the regional and local control measures necessary to meet the rate-of-progress requirements through the